

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

KATHRYN ROBINSON,

Plaintiff,

Case No.: _____

THE HONORABLE DENIS RICHARD MCDONOUGH,
SECRETARY OF THE UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS,

Involuntary Plaintiff,

Removed From:
Milwaukee County Circuit Court
Case No. 22-CV-624

v.

SPEEDWAY LLC,
ABC MAINTENANCE COMPANY and
DEF INSURANCE COMPANY,

Defendants.

NOTICE OF REMOVAL OF CIVIL ACTION

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, the Defendant, Speedway LLC (“Speedway”), seeks to remove this case from Milwaukee County Circuit Court, State of Wisconsin, to the United States District Court for the Eastern District of Wisconsin. In support of this Notice of Removal, Speedway states as follows:

1. On January 31, 2022, the above-entitled action was electronically filed in Milwaukee County Circuit Court, State of Wisconsin, as Case No. 2022-CV-624. *See*, Exhibit A: Summons and Complaint.
2. No demand or medical bills concerning Plaintiff’s damages were conveyed to Speedway prior to the filing of the above case.

3. Pursuant to Wis. Stat. § 802.02(1m), the tort-based complaint did not contain an amount in controversy. *See*, Exhibit A: Complaint.
4. On March 11, 2022, Speedway electronically filed an Answer to the Complaint. *See*, Exhibit B: Answer and Affirmative Defenses to Plaintiff's Complaint.
5. On June 21, 2022, Plaintiff electronically filed a scheduling conference data sheet in which Plaintiff disclosed that past medical expenses claimed are \$174,119.89. *See*, Exhibit C: Plaintiff's Scheduling Conference Data Sheet.
6. Venue of this removal is proper under 28 U.S.C. § 1441(a) because this court is the U.S. District Court for the District corresponding to the place where the state court action is pending.
7. This is a civil action that falls under the court's original jurisdiction under 28 U.S.C. § 1332 (diversity of citizenship and amount in controversy) and is one that may be removed by this court based on 28 U.S.C. § 1441 and 1446.
8. Plaintiff's scheduling conference data sheet alleges an amount in controversy that exceeds \$75,000.
9. Diversity jurisdiction exists because Plaintiff and Defendant are citizens of different states. Further, although Involuntary Plaintiff, the Department of Veterans Affairs, is not recognized as a "citizen" of any state, diversity jurisdiction exists because the governmental agency is neither being sued nor asserting its own claim. *See*, e.g., *Howard v. Wal-Mart Stores East I, LP*, Case No. 18-CV-431-JPS, 2018 U.S. Dist. LEXIS 158951, *3 (E.D. Wis. September 18, 2018) (the Honorable J.P. Stadtmueller explained: "[s]imilarly, because there are no claims asserted against [the federal agency] itself, *Corcoran* does not require dismissal of the suit.") (citing

Gen. Ry. Signal Co. v. Corcoran, 921 F.2d 700, 703 (7th Cir. 1991) (holding that United States agencies cannot be sued in diversity)). Therefore, the Department's joinder in this matter does not preclude this Court from exercising jurisdiction.

10. Plaintiff's Complaint alleges that she is a resident of Milwaukee County in the State of Wisconsin.
11. Speedway LLC is a Delaware limited liability company with a sole member SEI Speedway Holdings, LLC. SEI Speedway Holdings, LLC is a Delaware limited liability company with a sole member 7-Eleven, Inc. 7-Eleven, Inc. is a Texas corporation with its principal place of business in Irving, Texas. Thus, Speedway LLC is a citizen of Texas, as Speedway's sole member is a citizen of Texas. *Belleville Catering Co. v. Champaign Mkt. Place LLC*, 350 F.3d 691 (7th Cir. 2003).
12. The United States Department of Veterans Affairs is a governmental agency, duly organized and existing under and by virtue of the laws of the United States. Plaintiff alleges doubt that the Department is truly subrogated or interested in this action, but Plaintiff joined the Department as a party for the purposes of complying with the Federal Medical Care Recovery Act. 42 U.S.C. §§ 2651-2653. *See*, Compl. At ¶ 2. The Department has not appeared in this case and has not asserted an independent claim for recovery.
13. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is filed with this Court within 30 days after receipt of the Scheduling Conference Data Sheet which first put Speedway on notice that the amount in controversy exceeds \$75,000.00.

14. Filed herewith as Exhibit D is a complete copy of the Milwaukee County Circuit Court electronic record.

WHEREFORE, the Defendant, Speedway LLC, hereby requests removal of the above-captioned action from Milwaukee County Circuit Court, State of Wisconsin, to the United States District Court for the Eastern District of Wisconsin.

Dated at Milwaukee, Wisconsin, this 20th day of July, 2022.

s/ Jason P. Gehring

Jason P. Gehring
State Bar No. 1061084
Attorneys for Defendant, Speedway LLC
Kasdorf, Lewis & Swietlik, S.C.
One Park Plaza, Suite 500
11270 West Park Place
Milwaukee, WI 53224
Telephone: (414) 577-4000
Fax: (414) 577-4400
E-mail: jgehring@kasdorf.com